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17 *Attorneys for Relators*

18 **IN THE UNITED STATES DISTRICT COURT**  
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 UNITED STATES OF AMERICA and  
21 STATE OF CALIFORNIA *ex rel.*  
22 DIXIE SWITZER, AS EXECUTOR TO  
23 THE ESTATE OF TED SWITZER,  
24 AND DIXIE SWITZER;

25 Plaintiffs,

26 v.

27 ROBERT C. WOOD, II; *et al.*;

28 Defendants.

CASE NO. CV 18-8118-CJC (ASx)

**PROTECTIVE ORDER<sup>1</sup>**

<sup>1</sup>This Stipulated Protective Order is substantially based on the model protective order provided under Magistrate Judge Alka Sagar's Procedures.  
STIPULATED PROTECTIVE ORDER; Case No. CV 18-8118-CJC (ASx)

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

B. GOOD CAUSE STATEMENT

This action is likely to involve HIPAA-protected, financial, and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, confidential business or financial information, medical records, information implicating privacy rights of third parties, information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonably necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and to serve the ends of justice, a protective

1 order for such information is justified in this matter. It is the intent of the parties that  
2 information will not be designated as confidential for tactical reasons, that nothing  
3 be so designated without a good faith belief that it has been maintained in a  
4 confidential, non-public manner, and that there is good cause why it should not be  
5 part of the public record of this case.

6 2. DEFINITIONS

7 2.1 Action: this pending federal law suit.

8 2.2 Challenging Party: a Party or Non-Party that challenges the designation  
9 of information or items under this Order.

10 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
11 how it is generated, stored or maintained) or tangible things that qualify  
12 for protection under Federal Rule of Civil Procedure 26(c), and as  
13 specified above in the Good Cause Statement.

14 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
15 support staff).

16 2.5 Designating Party: a Party or Non-Party that designates information or  
17 items that it produces in disclosures or in responses to discovery as  
18 “CONFIDENTIAL.”

19 2.6 Disclosure or Discovery Material: all items or information, regardless of  
20 the medium or manner in which it is generated, stored, or maintained  
21 (including, among other things, testimony, transcripts, and tangible  
22 things), that are produced or generated in disclosures or responses to  
23 discovery in this matter.

24 2.7 Expert: a person with specialized knowledge or experience in a matter  
25 pertinent to the litigation who has been retained by a Party or its counsel  
26 to serve as an expert witness or as a consultant in this Action.

27 2.8 House Counsel: attorneys who are employees of a party to this Action.  
28 House Counsel does not include Outside Counsel of Record or any other

outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, and includes support staff.

2.11 Party: any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as "CONFIDENTIAL."

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial

1 judge. This Order does not govern the use of Protected Material at trial.

2 4. DURATION

3 Because Protected Material in this action likely will include HIPPA-protected  
 4 patient information and records, the parties anticipate that, in advance of trial, the  
 5 parties will seek court authorization to maintain the confidentiality of certain  
 6 categories of Protected Material during the duration of the trial. All other information  
 7 that was designated as confidential or maintained pursuant to this protective order  
 8 shall become public and will be presumptively available to all members of the public,  
 9 including the press, unless compelling reasons supported by specific factual findings  
 10 to proceed otherwise are made to the trial judge in advance of the trial. *See Kamakana*  
 11 *v. City and County of Honolulu*, 447 F.3d 1172, 1180-81 (9<sup>th</sup> Cir. 2006)  
 12 (distinguishing “good cause” showing for sealing documents produced in discovery  
 13 from “compelling reasons” standard when merits-related documents are part of court  
 14 record).

15 As to any categories of Protected Material that the Court determines shall  
 16 maintain their confidentiality under this Order during the duration of the trial, the  
 17 confidentiality obligations imposed by this Order shall remain in effect even after  
 18 Final Disposition of this litigation until a Designating Party agrees otherwise in  
 19 writing or a court order otherwise directs.

20 Final disposition shall be deemed to be the later of (1) dismissal of all claims  
 21 and defenses in this Action, with or without prejudice; and (2) final judgment herein  
 22 after the completion and exhaustion of all appeals, rehearings, remands, trials, or  
 23 reviews of this Action, including the time limits for filing any motions or applications  
 24 for extension of time pursuant to applicable law.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.  
 27 Each Party or Non-Party that designates information or items for protection under this  
 28 Order must take care to limit any such designation to specific material that qualifies

1 under the appropriate standards. The Designating Party must designate for protection  
 2 only those parts of material, documents, items, or oral or written communications that  
 3 qualify so that other portions of the material, documents, items, or communications  
 4 for which protection is not warranted are not swept unjustifiably within the ambit of  
 5 this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations  
 7 that are shown to be clearly unjustified or that have been made for an improper  
 8 purpose (e.g., to unnecessarily encumber the case development process or to impose  
 9 unnecessary expenses and burdens on other parties) may expose the Designating Party  
 10 to sanctions.

11 If it comes to a Designating Party's attention that information or items that it  
 12 designated for protection do not qualify for protection, that Designating Party must  
 13 promptly notify all other Parties that it is withdrawing the inapplicable designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in  
 15 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
 16 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
 17 under this Order must be clearly so designated before the material is disclosed or  
 18 produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic  
 21 documents, but excluding transcripts of depositions or other pretrial or trial  
 22 proceedings), that the Producing Party affix at a minimum, the legend  
 23 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
 24 contains protected material. If only a portion or portions of the material on a page  
 25 qualifies for protection, the Producing Party also must clearly identify the protected  
 26 portion(s) (e.g., by making appropriate markings in the margins).

27 A Party or Non-Party that makes original documents available for inspection  
 28 need not designate them for protection until after the inspecting Party has indicated

1 which documents it would like copied and produced. During the inspection and before  
 2 the designation, all of the material made available for inspection shall be deemed  
 3 “CONFIDENTIAL.” After the inspecting Party has identified the  
 4 documents it wants copied and produced, the Producing Party must determine which  
 5 documents, or portions thereof, qualify for protection under this Order. Then, before  
 6 producing the specified documents, the Producing Party must affix  
 7 the “CONFIDENTIAL legend” to each page that contains Protected Material. If only  
 8 a portion or portions of the material on a page qualifies for protection, the Producing  
 9 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
 10 markings in the margins).

11 (b) for testimony given in depositions that the Designating Party identify the  
 12 Disclosure or Discovery Material on the record, before the close of the deposition all  
 13 protected testimony.

14 (c) for information produced in some form other than documentary and for  
 15 any other tangible items, that the Producing Party affix in a prominent place on the  
 16 exterior of the container or containers in which the information is stored the legend  
 17 “CONFIDENTIAL.” If only a portion or portions of the information warrants  
 18 protection, the Producing Party, to the extent practicable, shall identify the protected  
 19 portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
 21 failure to designate qualified information or items does not, standing alone, waive the  
 22 Designating Party’s right to secure protection under this Order for such material. Upon  
 23 timely correction of a designation, the Receiving Party must make reasonable efforts  
 24 to assure that the material is treated in accordance with the provisions of this Order.

## 25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
 27 designation of confidentiality at any time that is consistent with the Court’s  
 28 Scheduling Order.



1           6.2 Meet and Confer. The Challenging Party shall initiate the informal  
2 dispute resolution process set forth in the Court's Procedures and Schedules. *See*  
3 <http://www.cacd.uscourts.gov/honorable-alka-sagar>.

4           6.3 The burden of persuasion in any such challenge proceeding shall be on  
5 the Designating Party. Frivolous challenges, and those made for an improper purpose  
6 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
7 expose the Challenging Party to sanctions. Unless the Designating Party has waived  
8 or withdrawn the confidentiality designation, all parties shall continue to afford the  
9 material in question the level of protection to which it is entitled under the Producing  
10 Party's designation until the Court rules on the challenge.

11       7. ACCESS TO AND USE OF PROTECTED MATERIAL

12           7.1 Basic Principles. A Receiving Party may use Protected Material that is  
13 disclosed or produced by another Party or by a Non-Party in connection with this  
14 Action only for prosecuting, defending, or attempting to settle this Action. Such  
15 Protected Material may be disclosed only to the categories of persons and under the  
16 conditions described in this Order. When the Action has been  
17 terminated, a Receiving Party must comply with the provisions of section 13 below  
18 (FINAL DISPOSITION).

19           Protected Material must be stored and maintained by a Receiving Party at a  
20 location and in a secure manner that ensures that access is limited to the persons  
21 authorized under this Order.

22           7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
23 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
24 Receiving Party may disclose any information or item designated  
25 "CONFIDENTIAL" only to:

26           (a) the Receiving Party's Outside Counsel of Record in this Action, as well  
27 as employees of said Outside Counsel of Record to whom it is reasonably necessary  
28 to disclose the information for this Action;



(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

#### 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification shall  
2 include a copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to  
4 issue in the other litigation that some or all of the material covered by the subpoena  
5 or order is subject to this Protective Order. Such notification shall include a copy of  
6 this Stipulated Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued  
8 by the Designating Party whose Protected Material may be affected. If the Designating  
9 Party timely seeks a protective order, the Party served with the subpoena or court order  
10 shall not produce any information designated in this action as “CONFIDENTIAL”  
11 before a determination by the court from which the subpoena or order issued, unless  
12 the Party has obtained the Designating Party’s permission. The Designating Party  
13 shall bear the burden and expense of seeking protection in that court of its confidential  
14 material, and nothing in these provisions should be construed as authorizing or  
15 encouraging a Receiving Party in this Action to disobey a lawful directive from  
16 another court.

17 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
18 PRODUCED IN THIS LITIGATION

19 (a) The terms of this Order are applicable to information produced by a Non-  
20 Party in this Action and designated as “CONFIDENTIAL.” Such information  
21 produced by Non-Parties in connection with this Action is protected by the remedies  
22 and relief provided by this Order. Nothing in these provisions should be construed as  
23 prohibiting a Non-Party from seeking additional protections.

24 (b) In the event that a Party is required, by a valid discovery request, to  
25 produce a Non-Party’s confidential information in its possession, and the Party is  
26 subject to an agreement with the Non-Party not to produce the Non-Party’s  
27 confidential information, then the Party shall:

28 (1) promptly notify in writing the Requesting Party and the Non-Party

1 that some or all of the information requested is subject to a  
2 confidentiality agreement with a Non-Party;

3 (2) promptly provide the Non-Party with a copy of the Stipulated  
4 Protective Order in this Action, the relevant discovery request(s),  
5 and a reasonably specific description of the information requested;  
6 and

7 (3) make the information requested available for inspection by the  
8 Non-Party, if requested.

9 (c) If the Non-Party fails to seek a protective order from this Court within  
10 14 days of receiving the notice and accompanying information, the Receiving Party  
11 may produce the Non-Party's confidential information responsive to the discovery  
12 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not  
13 produce any information in its possession or control that is subject to the  
14 confidentiality agreement with the Non-Party before a determination by the Court.  
15 Absent a court order to the contrary, the Non-Party shall bear the burden and expense  
16 of seeking protection in this Court of its Protected Material.

#### 17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
19 Protected Material to any person or in any circumstance not authorized under this  
20 Order, the Receiving Party must immediately (a) notify in writing the Designating  
21 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all  
22 unauthorized copies of the Protected Material, (c) inform the person or persons to  
23 whom unauthorized disclosures were made of all of the terms of this Order, and (d)  
24 request such person or persons to execute the "Acknowledgment and Agreement to  
25 Be Bound" that is attached hereto as Exhibit A.

#### 26 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 27 PROTECTED MATERIAL

28 When a Producing Party gives notice to Receiving Parties that certain

inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review.

## 12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek a modification by the Court of this Order in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

## 13. FINAL DISPOSITION

After the Final Disposition of this Action, as defined in paragraph 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this paragraph, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party

1 must submit a written certification to the Producing Party (and, if not the same person  
 2 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by  
 3 category, where appropriate) all the Protected Material that was returned or destroyed  
 4 and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
 5 compilations, summaries or any other format reproducing or capturing any of the  
 6 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an  
 7 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
 8 legal memoranda, correspondence, deposition and trial exhibits, expert reports,  
 9 attorney work product, and consultant and expert work product, even if such materials  
 10 contain Protected Material. Any such archival copies that contain or constitute  
 11 Protected Material remain subject to this Protective Order as set forth in Section 4  
 12 (DURATION).

13 14. Any violation of this Order may be punished by any and all appropriate  
 14 measures including, without limitation, contempt proceedings and/or monetary  
 15 sanctions.

16  
 17 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

18  
 19 Respectfully submitted,

20  
 21 Dated: July 10, 2023

**COTCHETT, PITRE & McCARTHY LLP**

22  
 23 By: /s/Grace Y. Park

24 JUSTIN T. BERGER  
 25 GRACE Y. PARK  
 26 JEFFREY G. MUDD

27 *Attorneys for Relators*  
 28

1 Dated: July 10, 2023

**RIMON P.C.**

2  
3 By: /s/Claire K. Mitchell

J PAUL GIGNAC

4 CLAIRE K. MITCHELL

5 *Attorneys for Defendants*

6 *Michael Maguire, M.D., Sean Early, M.D.*

7  
8 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

9  
10 Dated: July 11, 2023

11  
12 By: / s / Sagar

HONORABLE ALKA SAGAR

13 *United States Magistrate Judge*

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name],  
 of \_\_\_\_\_ [print or type full address],  
 declare under penalty of perjury that I have read in its entirety and understand the  
 Stipulated Protective Order that was issued by the United States District Court for the  
 Central District of California on \_\_\_\_\_ [date] in the case of *United States of*  
*America, State of California ex rel. Ted Switzer, et al. v. Robert C. Wood, et al.*, CV  
 18-8118 CJC (ASx) (C.D. Cal.). I agree to comply with and to be bound by all the  
 terms of this Stipulated Protective Order, and I understand and acknowledge that  
 failure to so comply could expose me to sanctions and punishment in the nature of  
 contempt. I solemnly promise that I will not disclose in any manner any information  
 or item that is subject to this Stipulated Protective Order to any person or entity except  
 in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court  
 for the Central District of California for the purpose of enforcing the terms of this  
 Stipulated Protective Order, even if such enforcement proceedings occur after  
 termination of this action. I hereby appoint \_\_\_\_\_  
 [print or type full name] of \_\_\_\_\_  
 [print or type full address and telephone number] as my California agent for service  
 of process in connection with this action or any proceedings related to enforcement of  
 this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_